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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re DELVON ADAMS

on Habeas Corpus.

G048702

(Super. Ct. No. 12CF0062)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus to file a timely notice of appeal. Petition granted.

Appellate Defenders, Inc., and Anita P. Jog for Petitioner.

Kamala D. Harris, Attorney General, and Julie L. Garland, Senior Assistant Attorney General for Respondent.

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THE COURT: *

Petitioner, Delvon Adams, seeks relief from the failure to file a timely notice of appeal. The petition is granted.

Following a court trial, Adams was convicted of three counts of second degree robbery. Firearm enhancements as to each count were found true, as was a prior conviction and Adams was sentenced to 21 years in prison. In his declaration, Adams states that his retained attorney advised him that he would file a notice of appeal on his behalf. According to Adams, family members confirmed the notice of appeal had been filed, but when he contacted the California Innocence Project, he learned for the first time that a notice of appeal had not been filed. Adams's declaration states that as soon as he learned the notice of appeal had not been filed, he prepared a notice of appeal and sent it to the Orange County Superior Court. According to the notice Adams received from the superior court, the notice of appeal had not been marked "received" but not filed because the notice was not timely. According to Adams, after he received correspondence from the superior court that his notice of appeal had not been filed, he contacted Appellate Defenders, Inc. for assistance.

According to habeas counsel's declaration, as soon as she learned about Adams's untimely notice of appeal, she made repeated attempts to contact trial counsel regarding Adams's desire to appeal his conviction, but received no response from trial counsel.

The principle of constructive filing of the notice of appeal should be applied in situations where trial counsel advises a criminal defendant that he will file a notice of appeal on his client's behalf, and then fails to do so in accordance with the law. (*In re Benoit* (1973) 10 Cal.3d 72, 87-88.) This is because a trial attorney is under a duty to either file the notice of appeal, or tell the client how to file it himself. In this case, Adams relied on trial counsel to file a timely notice of appeal on his behalf. His

* Moore, Acting P. J., Aronson, J., and Ikola, J.

reasonable reliance on counsel to file a timely notice of appeal entitles him to the relief requested.

The Attorney General does not oppose granting the petition without the issuance of an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 7728.)

The petition is granted. The Clerk of the Superior Court is directed to file the notice of appeal that was “received” but not filed on April 12, 2013. Further proceedings, including the preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, the opinion in this matter is deemed final as to this court forthwith.